

Sword of Summons

(P. Dwarakanath)

24th February, 1944 - A red letter day in the history of Indian Indirect Taxation system, for, on this day, the then Governor General of British India inked his signature on the 'The Central Excises and Salt Act, 1944'. As in those days, the Act is limited to very few manufactured items like Salt, Khandasari Sugar, Oils and more on agricultural products like Tobacco, in order to instil a sense of fear the cadre is made into an Uniform Cadre. No, I am not trying to write something about Uniform required or not required to the cadre. What I am trying to bring here is two of the draconian issues that are being used by these Uniformed Officers, even today.

The first being the AK47 that is in the hands of the officers, i.e., Power to Summon persons to give evidence and produce documents in inquiries under the provisions of Section 14 of the Central Excise Act, 1944 and the second is Power to Arrest under Section 13 *ibid*.

Normally, the Investigating authorities use the tool 'Summon' first to bring the un-suspected or accused person to their office and once he is so entangled in their hands, then the second tool is used to obtain 'Voluntary Payment Cheques'.

A Statement recorded from the 'accused' even a person like "Kasab" is not a piece of evidence in a court of law, unless, the same is recorded before a legal authority. However, a Statement/deposition recorded by an Officers not less than the rank of a Superintendent of Customs and Central Excise or Senior Intelligence Officer of DGCEI/DRI becomes a piece of 'evidence' which can be used in any court of law. The Central Board of Excise & Customs has repeatedly issued instructions to not to mis-use this weapon, ofcourse, in futile.

The Weapon 'Summon' is also given to the Officers under the now nascent Chapter of V of Finance Act, 1994, as amended a.k.a. Service Tax Act or Finance Act. As per Section 83 of Chapter V of Finance Act, 1994 the provisions of Section 14 of the Central Excise Act, 1944, shall apply, so far as may be, in relation to service tax as they apply in relation to excise duty. As per Section 14 any Central Excise Officer (not below the rank of Superintendent of Central Excise) shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making.

The power to issue Summons under Section 14 are being mis-used by many a officer to terrorise the trade.

The Central Board of Excise & Customs through instruction in F.No.137/39/2007-Cx-4, dated 26.2.2007 has taken a serious note on this issuance of summons by the officers in a routine manner and has also appreciated that this is a source of harassment and even leads to unethical practice and issued instructions that:

(a) For calling information/documents the normal mode of telephone or a simple letter should be made;

(b) If the above is failed then the officer should resort to issue of Summons

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Further, CBEC has also issued instructions in F.No.208/122/89-CX6, dated 13.10.1989, wherein it was instructed that issuance of summons to Managing Director/other Directors without justification would be viewed seriously by the Board and the Commissioner will be held personally responsible for enforcing these instructions. In other words, summons to the Managing Director or Directors can be issued as a last resort where the assessee is not cooperating and where the normal procedure of law failed.

The Board further vide Circular No.491/57/99-CX, dated 28.10.1999 has also issued instructions that departmental officers conducted audit of the units or records of the assessee will not issue any summons.

The normal practice followed by Officers of Anti-Evasion or DGCEI formations is that pressurising the assessee to issue cheques towards payment of duty/tax during the course of initial Issue of Summons to clients under Section 14 of the Central Excise Act, 1944> It is the normal practice or trick that is being used by the Investigating Officers in coercing the persons to pay atleast some amount of tax that may result as an outcome of their investigation on the day of their visit.

It is always informed by the Officers that they will arrest or even worse, they will also arrest the entire family or that if tax is paid along with interest, the issue will be closed, though the same is not followed. In some cases, if wife or mother is a partner, then the accused or the person Summoned will be directly threatened that they will be summoned or they will also be arrested, if an initial amount is not paid, ofcourse, voluntarily. There is no reasoning for the amount that is demanded to be paid as voluntary payment of duty/tax pending investigation, there is no freedom to say 'Under Protest' or 'Subject to out come of the investigation'.

The basic issue here is whether during the search, officers can collect cheque for recovery of duty/tax and the answer is a big no.

In this regard, the decisions of Hon'ble Supreme Court in the case of Dabur India Ltd., State of Uttar Pradesh [1990 (49) E.L.T. 3 (SC)] and the decisions of the Hon'ble High Court of Gujarat in the case of M/s. Abhishek Fashions Vs. Union of India [2008 (10)S.T.R. 502 (Guj) and in the case of M/s. Sonali Dyeing and Printing Pvt., Ltd., Vs. Union of India [2008 (12) S.T.R. 524(Guj) are to be taken into consideration and the visiting officers may be informed about these decisions and may be requested from refraining themselves from collecting the Cheque.

I am not saying that all Investigating Officers act in the above lines and I am also not saying that each and every person Summoned is above board or each and every voluntary payment is 'voluntary' in the above sense. However, it is my endeavor to advise to the persons who are being Summoned should co-operate with the Departmental officers causing investigation and if the investigations leads to harassment, the above instructions should be brought to the notice of the higher officers.